

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LENIER AYERS,

Plaintiff,

V.

HENRI RICHARDS, *et al.*,

## Defendants.

Case No. 08-5541RJB

## ORDER RE REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 11), and on Plaintiff's First Amended Complaint (Dkt. 12). The Court has considered the relevant documents and the remainder of the file herein.

On September 29, 2008, Plaintiff filed a Petition for Writ of Mandamus (Dkt. 4) requesting that the Magistrate Judge order the removal of an employee of the Special Commitment Center (“SCC”) because Plaintiff alleged that the employee deliberately subjected the Plaintiff to physical and emotional abuse. Dkt. 4. On November 12, 2008, the Magistrate Judge entered an Order to Show Cause (Dkt. 7) stating that the Plaintiff’s complaint had no arguable basis in law or fact because the district court does not have jurisdiction to issue a writ of mandamus to state officers. Dkt. 7. Due to the deficiencies in the Plaintiff’s complaint, the Magistrate Judge ordered the Plaintiff to file an amended complaint curing the deficiencies, or to show cause explaining why this matter should not be dismissed, by December 5, 2008. Dkt. 7. On December 31, 2008, Magistrate Judge Strombom entered a Report and Recommendation stating that the Plaintiff’s action should be dismissed with prejudice for failure to state a claim. Dkt. 11. On January 5, 2009, the Plaintiff filed

## ORDER

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1 an amended complaint late. Dkt. 12.

2 The Plaintiff's amended complaint appears to have been untimely filed, but in the interest of  
3 fairness and justice in light of Plaintiff's pro se status, this Court should accept the amended  
4 complaint for filing and refer the matter to the Magistrate Judge for consideration. An amended  
5 pleading supersedes the original pleading. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d  
6 1542, 1546 (9th Cir. 1990). Because Plaintiff's amended complaint supersedes prior complaints, the  
7 Magistrate Judge's Report and Recommendation is moot, and should be rejected as such. The  
8 undersigned has not considered the adequacy of the amended complaint.

9 The Court does hereby ORDER:

10 Plaintiff's first amended complaint is accepted for filing.

11 The case is re-referred to the Magistrate Judge;

12 The Report and Recommendation (Dkt. 11) is rejected as moot;

13 The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants and to  
14 the Hon. Karen L. Strombom.

15 Dated this 2<sup>nd</sup> day of February, 2009.

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18 ROBERT J. BRYAN  
19 United States District Judge  
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